

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Comerica Leasing Corp., et al.,

Case No. 3:08CV2922

Plaintiff

v.

ORDER

Air-Ride, Inc., et al.,

Defendant

This is a diversity action on a set of debt obligations between the creditors/plaintiffs, Comerica Leasing Corp. and Comerica Bank, and obligor/defendants, Air-Ride, Inc., a trucking company, and Fortress Properties, Inc., owner of premises used, apparently as Air-Ride's Terminal. Pending is the plaintiffs' motion for summary judgment. [Doc. 17]. Defendant. Air-Ride has filed no response.

Defendant Fortress filed a "Limited Response" [Doc. 25], in which it contended that the plaintiffs had failed to provide proof of sufficient to establish its liability and the amounts it owes. Thereafter, plaintiffs filed a reply [Doc. 30], in which they answered each of Fortress's questions, and supplied such information as may otherwise have been missing or not readily apparent.

That being so, there is no dispute by either Air-Ride or Fortress that plaintiffs are entitled to the relief they seek. I find, accordingly:

- The Lease Agreement on which plaintiffs seek to recover is in default;
- The Lease Agreement is, by its terms, terminated;
- The total indebtedness due under the Lease Agreement is immediately due and payable;
- Plaintiffs are entitled to judgment and other relief as they request, including, *inter alia*, possession of the equipment at issue.

In light of those findings, and the affidavits, representations and arguments of plaintiffs and their counsel, it is hereby

ORDERED THAT:

1. Judgment be and the same hereby is entered in favor of plaintiffs and against defendant Air-Ride for the total indebtedness due under the Lease Agreement in the amount of \$200,560.14 (two hundred thousand, five hundred sixty and 14/100 dollars) plus interest and late fees from and after April 14, 2009, for the Schedule 1 Equipment, plus \$408,379.58 (four hundred eight thousand, three hundred seventy-nine and 58/100 dollars) plus interest and late fees from and after April 14, 2009, for the Schedule 2 Equipment plus other costs and expenses as set forth in the Lease Agreement;
2. The defendants shall, on request by and instructions from plaintiffs, forthwith take any and all actions necessary to enable plaintiffs to obtain possession of and title to the equipment at issue in this case; leave granted to plaintiffs to sell such equipment, and to recover as liquidated damages the aggregate Casualty Loss Value as defined in the Lease Agreement;
3. Judgment be and the same hereby is entered in favor of plaintiffs and against Fortress Properties in the amount of \$483,299.25 (four hundred eighty-three thousand, two hundred ninety-nine and 25/100 dollars) as of April 14, 2009, plus interest at the default rate as

provided in the Fortress Properties Note from and after April 14, 2009, in the amount of \$102.51 per diem and costs, expenses and attorney fees as provided in the Fortress Properties Note;

4. Judgment be, and the same hereby is entered in favor of plaintiffs and against Air-Ride in the amount of \$483,299.25 (four hundred eighty-three thousand, two hundred ninety-nine and 25/100 dollars) as of April 14, 2009, plus interest at the default rate as provided in the Fortress Properties Note from and after April 14, 2009, in the amount of \$102.51 per diem and costs, expenses and attorney fees as provided in the Fortress Properties Note for damages associated with Air-Ride's failure to pay the indebtedness it guaranteed under the Air-Ride Guaranty of the Fortress Properties Note;

5. A declaration be, and the same hereby is made that all obligations and liabilities of Air-Ride to Comerica whether now existing or hereafter incurred, shall become and are immediately due and payable, and that Comerica is entitled to exercise all rights set forth in the Letters of Credit Documents and to judgment in the amount of \$200,000.00 (two hundred thousand and 00/100 dollars), plus interest at the rate set forth therein in the amount of \$34.72 per diem on the OWBC Letter of Credit, and judgment in the amount of \$19,425.72 (nineteen thousand, four hundred twenty-five and 72/100 dollars), plus interest at the rate set forth therein in the amount of \$1.396 per diem on the American Casualty Letter of Credit;

6. Judgment be, and the same hereby is entered in favor of plaintiffs and against the defendants for interest, costs and expenses including attorney fees incurred in the preparation, filing and maintenance of this suit; plaintiffs' counsel to submit a proposed order on or before September 15, 2009, specifying and awarding the amount of the judgment

to be entered per this ¶ 6; on filing of the proposed order in accordance with this ¶ 6, the Clerk shall cause said order to be entered.

So ordered.

s/James G. Carr
James G. Carr
Chief Judge